the tract is taken. *Boom Co.* v. *Patterson,* 98 U. S. 403, 25 L. Ed. 206; *State* v. *Hudson Co. Freeholders,* 55 N. J. L. 88, 25 Atl. 322, 17 L. R. A. 785; 15 CYC. 685, 687. But difficulty arises frequently in determining what conditions and qualities of the land shall constitute its market value. The question of whether or not the adaptability of the land to the special use for which it is taken shall constitute a part of its market value, has given the courts more or less difficulty. 2 LEWIS, EMINENT DOMAIN, 2 ed., 1052. The general rule is that damages may be given for the value of the land for the special use for which it is taken, whereever such value has become a part of the market value of the land by enhancing the desirability of the property in the public mind. Thus, such a recovery was allowed where the use was such that there was existing, or imminently probable, competition for the land for such use. *Boom Co.* v. *Patterson, supra; In re Ashokan Dam,* 190 Fed. 413; *Shenandoah Val. R. Co.* v. *Shepherd,* 26 W. Va. 672. And the following decisions seem impliedly to base the recovery of damages on the same ground of competition. *Ligare* v. *Chicago M. & N. R. Co.,* 166 Ill. 249, 46 N. E. 803; *Hartshorn* v. *Ill. Val. R. Co.,* 216 Ill. 392, 75 N. E. 122; *Brown* v. *Forest Water Co.,* 213 Pa. St. 440, 62 Atl. 1078. Although the presence of competition is not shown, the principle seems to be recognized in, *Alloway* v. *Nashville,* 88 Tenn. (4 Pickle) 510, 13 S. W. 123, 8 L. R. A. 123, 1 Am. R. R. & Corp. Rep. 671. But where competition is prevented by the exercise of the use for which the land is taken being confined to a single agency (because of the nature of the use or the location of the land, etc.) the market value is not raised by the enhancement of the property's value in the public mind, and hence the adaptability of the land to the use cannot be considered in estimating damages. *United States* v. *Seufert Bros. Co.,* 78 Fed. 520; *Sargent* v. *Town of Merrimac,* 196 Mass. 171, 81 N. E. 970; *In re Simmons,* 195 N. Y. 573, 88 N. E. 1132, 130 App. Div. 350, 356, 114 N. Y. Supp. 571, 575. And where land on both sides of a stream was condemned for a mill dam site, such location was held not to constitute the land peculiarly valuable as such a site, since other land on the stream was equally adaptable for such purposes. *Indiana Power Co.* v. *St. Joseph & E. Power Co.,* 159 Ind. 42, 63 N. E. 304; *Id.,* 159 Ind. 42, 64 N. E. 468. Moreover, the value of the land to the condemner because of its *necessity* to him cannot be considered in awarding damages, because such necessity is inestimable in value, and moreover, does not influence the public mind so as to increase the market value. *United States* v. *Seufert Bros. Co., supra; Ligare* v. *Chicago M. & N. R. Co., supra; St. Louis K. & N. W. R. Co.* v. *Knapp, Stout & Co.,* 160 Mo. 396, 61 S. W. 300; *In re Simmons, supra; Alloway* v. *Nashville, supra.* The decision in each case must rest largely upon its own peculiar facts, and hence no definite rule can be formulated to cover all cases.

EQUITY—WATER AND WATERCOURSES—INJUNCTION—PRESCRIPTION.—The defendant diverted certain waters which otherwise would have flowed into a lake. The plaintiff who owned land bordering on this lake brought suit to enjoin the defendant from diverting the water. The exact dam-

age could not be ascertained on account of the season of the year. *Held,* the application for an injunction will be continued until the definite amount of damages can be ascertained. *Coulee Live Stock Co.* v. *Pluvius Development Co.* (Wash.), 134 Pac. 684.

It is settled that a court of equity will not grant an injunction to prevent the infringement of a naked legal right when no more than nominal damage is sustained and the infringement is for a beneficial use. *Whittesley* v. *Hartford, etc., Ry. Co.,* 23 Conn. 421; *McCullough* v. *City of Denver,* 39 Fed. 307. And when irreparable damage is alleged but proof is merely speculative and the approximate damage cannot be ascertained, equity will not grant an injunction. *Wintermute* v. *Tacoma Light Co.,* 3 Wash. 727, 29 Pac. 444. This rule is said to be dangerous, on account of the liability of the plaintiff to lose his right by prescription. The danger, however, may be avoided by the granting of an injunction not immediately operative, as in *Ulbricht* v. *Eufaula Water Co.,* 86 Ala. 587, 11 Am. St. Rep. 72. In this case no special damage was alleged and the suit was brought solely to prevent the loss of the plaintiff's right by prescription. A perpetual injunction was granted restraining the defendant from ever using water "to the sensible injury or damage of the complainant, for any purpose for which he may now or in the future have use for said water." *Garwood* v. *N. Y. Cent. Ry. Co.,* 83 N. Y. 400, 38 Am. Rep. 452, supports this doctrine.

EXECUTORS AND ADMINISTRATORS—RIGHT OF ADMINISTRATOR TO SET ASIDE FRAUDULENT CONVEYANCE MADE BY DECEDENT.—An administrator of an insolvent estate instituted proceedings in equity for the benefit of the decedent's creditors to have a fraudulent conveyance made by the decedent set aside. *Held,* the proceedings are maintainable. *Trust Co.* v. *Pugh* (Penn.), 88 Atl. 319.

This decision is based on the ground that an administrator serves in a dual capacity; that while he acts as the personal representative of the deceased, at the same time he acts as trustee for the latter's creditors and must protect their interest.

The decisions involving this point may be divided into three classes:

First, those cases that are in line with the decision above. *Andruss* v. *Moore,* 11 Conn. 283; *Frost* v. *Libby,* 79 Me. 56, 8 Atl. 147 (*dictum*); *Cooley* v. *Brown,* 30 Iowa 470; *Everett* v. *Read,* 3 N. H. 55.

Second, those cases that deny to an administrator the right to set aside a fraudulent conveyance made by the decedent. *Davis* v. *Swanson,* 54 Ala. 277, 25 Am. Rep. 678; *Eubanks* v. *Dobbs,* 4 Ark. (4 Pike) 173; *Crosby* v. *DeGraffenreid,* 19 Ga. 290; *Crawford* v. *Lehr,* 20 Kan. 509; *Moore* v. *Minerva,* 17 Tex. 20. These decisions are based upon the principle that an administrator stands in the shoes of the decedent, succeeding to his rights and burdens; and that since the fraudulent conveyance is binding upon the decedent it is binding also upon the administrator. And further since the creditors have ample power to set aside the fraudulent conveyance, this duty devolves upon them and not upon the administrator.

Third, those cases wherein the decisions are based upon state statutes